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PROVIDENCE

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April 1, 2019

Nicholas J. Hemond, President
Providence School Board
797 Westminster Street
Providence, RI 02903-4045

RE: March 29, 2019 Correspondence

Dear President Hemond:

Please be advised that Times 2 Incorporated has referred your March 29, 2019 communication to this office for response. Said correspondence purports to be a notice of the following alleged breaches of the Management Agreement (“Agreement”) under which Times 2 Incorporated is operating the Times² Academy:

1. In 2016, Times 2 Incorporated failed to consult with the Providence School Board when hiring Dr. Rudolph Moseley, Jr. as Executive Director and head of school, and also failed to present Dr. Moseley’s employment contract for approval by the Providence School Board.
2. Since 2014, Times 2 Incorporated failed to provide quarterly financial reports.

Your letter goes on to state that unless these alleged breaches are cured within 90 days, Providence will terminate the Agreement. You further state that effective immediately, the Providence School Board is demanding that Dr. Moseley cease and desist from acting as head of school. You further state that the Superintendent will be sending an interim administrator to act in his place.

Our clients take the position that your assertions of breach of contract are incorrect. Furthermore, we believe that your response to the alleged breach is disproportionate to the nature of said breach and abridges, if not usurps prerogatives of Times 2. In fact, we believe that the actions taken in response represent a breach of the Agreement on Providence's side.

The issue regarding quarterly financial reports will be easily remedied. Of greater concern in Providence's unauthorized attempt to displace Dr. Moseley. We direct your attention to Article 19(b) of the Agreement regarding the selection of a head of school:

School Administrator. Because the accountability of Times² to the PSD is an essential element of this Agreement, and because the responsibility of the administrator or principal in the Charter School is critical to its success, Times² will have the authority, consistent with state law, in consultation with the PSD, to recruit, select and supervise the administrator, principal or other designated head of the school and to hold her or him accountable for the success of the Charter School. The terms of the employment contract with the administrator, and the duties and compensation of the administration shall be determined by Times² subject to the approval of the PSD, *which approval shall not be unreasonably withheld.*

(Emphasis added.)

Under the terms of this passage, Times 2 Incorporated has broad authority to select the head of school. This passage further makes it clear that Times 2 Incorporated – not Providence, is the individual authorized to select a head of school. Providence only has the right to be consulted. In addition, while Providence may have the right to approve the contract, duties, and compensation of the head of school, Providence may not unreasonably withhold such approval.

We believe that there has been no breach of this passage, as you suggest. At best, there is only a technical breach. Dr. Moseley was hired as Executive Director in January, 2016. It may be that Providence did not formally approve Dr. Moseley's contract. However, as was described to the Providence School Board on the night of March 28, 2019, the Board has been fully aware that Dr. Moseley has acted as the head of the school for over three years. There has been no challenge to the legitimacy of his role throughout that period. Providence thus at least tacitly approved Dr. Moseley's taking the role as head of school for over *three years*.

Providence's *volte-face* itself on this point violates the Agreement. Article 19 makes it very clear that Dr. Moseley is the employee of Times 2 Incorporated, not Providence. For that reason, we believe it was beyond Providence's authority to order him to cease and desist from performing his duties as head of school. Furthermore, your correspondence provides us with no cause as to why his role as head of school is being challenged at this point. Therefore, it appears

that Providence is acting unreasonably in withdrawing its tacit approval of Dr. Moseley's role as head of school.

Your attempt to put an interim administrator in Dr. Moseley's place similarly violates the Article 19 of Agreement. Because Times2 Incorporated is the only entity with the right to recruit and select the head of school, it follows that Providence does not have the right to go out and find its own candidate. However, that is exactly what Providence attempts to do by installing an interim head of school.

Your actions in attempting to remove Dr. Moseley are also violative of other portions of the Agreement. The Agreement repeatedly references Times 2 Incorporated's independence in operating the Academy. In addition, Article 27 of the Agreement, pertaining to the resolution of disputes, provides:

The parties agree to cooperate in good faith in all actions relating to this Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes in connection with this Agreement.

Article 25(e) in fact provides a full process for how the parties should deal with alleged breaches and/or disputes about the operation of the Academy. That section provides, in pertinent part:

- (1) The PSD shall give Times² written notice of its intent to terminate this Agreement at least 90 days prior to the effective date of termination stated in the notice. Notwithstanding the foregoing, any termination will not become effective until the end of a school year unless there are unusual and compelling circumstances which justify the disruption to the educational program and the students caused by a mid-year termination.
- (2) The cause for termination shall immediately be submitted to the Superintendent and Times²'s Chief Executive Officer, or their respective designees, for consideration and discussions to attempt to resolve the matter. If these representatives are unable to resolve the matter, then either party may submit the matter delivering written notice to the other party within 30 days following delivery of the termination notice. If the matter is not resolved and is not submitted to arbitration as provided herein, then termination shall become effective in accordance with PSD's termination notice.

Your attempt to displace Dr. Moseley appears to fall short of the spirit of cooperation and communication contemplated by these passages. Displacing Dr. Moseley, and leaving in his place an unspecified "interim administrator" is inherently disruptive of Times 2 Incorporated's leadership over the Academy. As was discussed at the meeting of March 28, 2019, the Academy is already faced with the difficult process of taking the steps necessary to improve student achievement – especially for English Language Learners and Special Education students. Your actions are undermining those attempts, and impeding educational progress. This course of action is far out of proportion with the nature of the breach that you allege, that is, a technical violation of the provisions regarding the hiring of Dr. Moseley in 2016, and a failure to submit

paperwork that has gone without objection since about 2014. More to the point, there is absolutely no provision in the Agreement that allows you to unseat a head of school in any event.

With all this said, our clients are interested in pursuing the process of discussion and attempts at resolution described in Article 25(e)(2) cited above. We further observe that the parties apparently have more to discuss other than the issues outlined in your March 29, 2019 correspondence. We believe that the instant dispute is really the culmination of a series of disputes that has festered over the years regarding governance over the Academy. These disputes involve Times 2 Incorporated's authority to institute needed reforms, implement the Times² school design, select teaching staff, and to hold that teaching staff accountable. There are also disputes about whether or not Providence has fulfilled its monetary obligations to Times 2 Incorporated in terms of passing on federal funding earmarked for the Academy. However, if we utilize the process outlined in Article 25(e), there is an opportunity to finally resolve these longstanding issues that have distracted all of the parties from concentrating on improving the education and prospects of Providence children.

Accordingly, we ask that the resolution process be started at the earliest opportunity of both Parties. In the meantime, Times 2 Incorporated must insist that Providence refrain from taking the unauthorized action of removing Dr. Moseley as the head of school and/or installing an "interim administrator" to replace him. Pursuant to the Agreement, that remains the function of Times 2 Incorporated until the Agreement is validly terminated.

Very truly yours,

Stephen M. Robinson

c: Dr. Ken Wagner, Commissioner
Christopher Maher, Superintendent
Charles Ruggerio, Esq.